

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In Re:

Case No. 03-36380

Gary Gene Kuper,

Debtor(s).

**NOTICE OF HEARING, VERIFIED MOTION FOR TURNOVER
TO THE TRUSTEE OF PROPERTY OF THE ESTATE AND
MEMORANDUM OF LAW IN SUPPORT OF MOTION**

TO: Gary Gene Kuper, 8064 Marsh Creek Alcove, Woodbury, MN 55125
Thomas F. Miller, 715 Florida Avenue South, #305, Minneapolis, MN 55426
United States Trustee, 1015 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415

1. Mary Jo A. Jensen-Carter, Trustee of the bankruptcy estate of the above-named Debtor(s) ("Trustee"), moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on **September 15, 2004 at 3:30 p.m.**, before the Honorable Gregory F. Kishel, Chief Judge of the U.S. Bankruptcy Court, in Courtroom Number 228B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.
3. Any response to this motion must be filed and delivered no later than September 10, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than September 3, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays).

IF A RESPONSE IS NOT TIMELY FILED, THE COURT, IN ITS DISCRETION, MAY GRANT THE RELIEF REQUESTED WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. The petition commencing this case was filed on February 27, 2004 and is now pending in this Court.
5. This motion arises under 11 U.S.C. §§ 541(a) and 542(a). This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5. The Trustee requests relief with respect to turnover of the following non-exempt assets:
 - 2002 state and federal income tax refunds in the amount of \$1,602.00
 - 2003 state income tax return and refunds, if any

MOTION FOR TURNOVER

6. The 341 meeting of creditors was held on October 20, 2003. The Trustee has requested turnover at the 341 meeting and by letters. See copies of the Trustee's March 26, 2004, April 16, 2004 and August 4, 2004 letters to the Debtor and/or his attorney attached hereto as Exhibits A, B & C. The Trustee has not received the requested items. In order to fully administer the estate, the Trustee must obtain the debtor's 2003 state income tax return and his 2002 tax refunds.
7. The Trustee also requests attorney fees in the amount of \$500.00, for the Trustee's costs and expenses in bringing this motion.

MEMORANDUM OF LAW

The law pertinent to this motion is found in 11 U.S.C. §§ 541(a) and 542(a). 11 U.S.C. § 541(a) provides that:

The commencement of a case under § 301, 302 or 303 of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of this case.

11 U.S.C. § 542 provides that:

- (a) Except as provided in subsections (c) or (d) of this section, an entity other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under Section 363 of this title, or that the debtor may exempt under Section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

The Trustee requests that the Court order the Debtor to turn over the requested non-exempt assets listed above.

WHEREFORE, the Trustee requests that this Court, issue an order that Debtor turn over the following assets:

- 2002 state and federal income tax refunds in the amount of \$1,602.00
- 2003 state income tax return and refunds, if any

The Trustee also requests attorney's fees in the amount of \$500.00 payable from Debtor.

Dated: August 18, 2004.

BUCKLEY & JENSEN

By /e/ Mary Jo A. Jensen-Carter
Mary Jo A. Jensen-Carter, #186041
1339 East County Road D
Vadnais Heights, MN 55109
(651) 486-7475

VERIFICATION

I, Mary Jo A. Jensen-Carter, Trustee and movant named in the motion, declare under penalty of perjury that the facts contained in the foregoing motion are true and correct to the best of my knowledge, information and belief.

Dated: August 18, 2004.

/e/ Mary Jo A. Jensen-Carter
Mary Jo A. Jensen-Carter, Trustee

**Mary Jo A. Jensen-Carter
Trustee in Bankruptcy
1339 East County Road D
Vadnais Heights, MN 55109**

**Telephone (651) 486-7475
Facsimile (651) 486-7468**

March 26, 2004

Thomas F. Miller
Thomas F. Miller, P.A.
715 Florida Avenue South, #305
Minneapolis, MN 55426

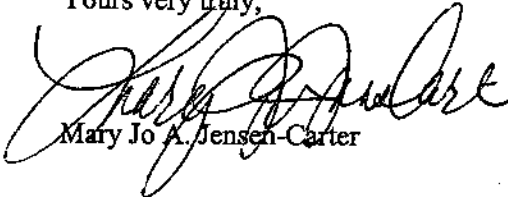
**RE: Gary Gene Kuper
Bankruptcy No. 03-36380**

Dear Mr. Miller:

Thank you for sending me copies of the debtor's 2003 state and federal tax returns. However, the second page of the Minnesota tax return is blank. Please provide me with a completed tax return so that I can determine what, if any, refund, the debtor is receiving from the State of Minnesota.

In addition, I have not received a response to my letter of March 2, 2004. I am enclosing a copy of that letter for your reference. In light of the fact that I cooperated with you in obtaining the documentation you needed, I expect to get the money immediately.

Yours very truly,



Mary Jo A. Jensen-Carter

MJJ:ag
enclosure

cc: Gary G. Kuper
8064 Marsh Creek Alcove
Woodbury, MN 55125

EXHIBIT A

Mary Jo A. Jensen-Carter
Trustee in Bankruptcy
1339 East County Road D
Vadnais Heights, MN 55109

Telephone (651) 486-7475
Facsimile (651) 486-7468

April 16, 2004

Thomas F. Miller
Thomas F. Miller, P.A.
715 Florida Avenue South, #305
Minneapolis, MN 55426

RE: Gary Gene Kuper
Bankruptcy No. 03-36380

Dear Mr. Miller:

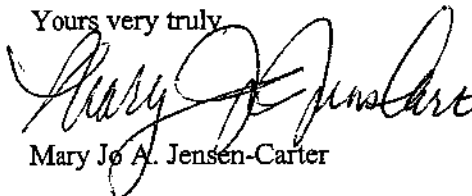
Thank you for your letter of April 15, 2004. I am willing to accept the debtor's offer to purchase the following estate assets for \$500:

- Cash in the amount of \$100
- Joint checking account at US Bank - \$137.48
- Bremer bank account - \$87.52
- Wedding ring and college class ring - \$100
- Sporting equipment - \$100

Please ask the debtor to send me a check for \$500 within ten days.

We do still have an issue remaining with respect to the debtor's 2002 and 2003 tax returns. Contrary to your assertion in your previous correspondence, it is certainly not clear that Mrs. Kuper made all of the contributions for payment of the taxes. In fact, funds withheld from both federal and state from what I presume to be Mrs. Kuper's wages are minimal compared to the total payments that have been made. Accordingly, it is my position that the bankruptcy estate is entitled to half of those refunds. Accordingly, the debtor owes the estate \$469.50 from the 2002 federal tax refund and \$1,132.50 for the state tax refund for a total of \$1,602. With respect to the debtor's 2003 tax returns, it appears that he is not entitled to a refund from the federal government. However, the second page of the state tax return is blank. Accordingly, I cannot tell if he is entitled to any refunds from the state. Accordingly, I will need him to send me a copy of the second page of the state tax return to determine if he is entitled to any refunds from the state. Please provide that second page to me within ten days.

Yours very truly,



Mary Jo A. Jensen-Carter

cc: Gary G. Kuper

EXHIBIT B

Subj: **Re: Gary Kuper**
Date: 8/4/2004 3:08:11 PM Central Daylight Time
From: Buckleyandjensen
To: thomas@millerlaw.com

Hi Tom

In reviewing this file, I note that you have not provided me with a full copy of the debtor's 2003 state tax return. In addition, I have not received the 2002 tax refunds of \$1602.00. Unless I have a check for both years refunds in my office on Monday, August 9th, I will file a turnover motion and seek \$500 in attorneys fees from the debtor. My patience is exhausted and I can no longer tolerate the debtor's failure to comply with my requests.

Jo Jensen-Carter

EXHIBIT C

Wednesday, August 04, 2004 America Online: Buckleyandjensen

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

In Re:

Case No. 03-36380

Gary Gene Kuper,

Debtor(s)

UNSWORN CERTIFICATE OF SERVICE

I, Ann M. Gagner, declare under penalty of perjury that on August 18, 2004, I served copies of the attached *Notice of Hearing, Verified Motion for Turnover to the Trustee of Property of the Estate, Memorandum of Law in Support of Motion and a proposed Order* by first class U.S. Mail, to the following parties:

Gary Gene Kuper 8064 Marsh Creek Alcove Woodbury, MN 55125	United States Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415
Thomas F. Miller 715 Florida Avenue South, #305 Minneapolis, MN 55426	

Executed on: August 18, 2004.

Signed: /e/ Ann M. Gagner
Ann M. Gagner
Buckley & Jensen
1339 East County Road D
Vadnais Heights, MN 55109

**UNITED STATES BANKRUPTCY COURT
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ORDER

The above-captioned matter came on before this Court on the motion of the Trustee, Mary Jo A. Jensen-Carter, for the turnover of the Debtor's non-exempt assets.

Based upon all of the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. The Trustee's Motion for Turnover is granted.
2. The Debtor shall turn over the following items to the Trustee within seven days of this Order:
 - 2002 state and federal income tax refunds in the amount of \$1,602.00
 - 2003 state income tax return and refunds, if any
3. The Debtor shall also pay the Trustee \$500.00 as and for attorney's fees awarded in bringing this motion.

Dated: _____, 2004.

Gregory F. Kishel
Chief United States Bankruptcy Judge